Marzuki Abdul Aziz v Ketua Polis Negara & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P-01-23 OF 1996
SITI NORMA YAAKOB, DENIS ONG AND HAIDAR JJCA
8 MAY 2003

Police *— Disciplinary proceedings — Dismissal — Show cause letter and dismissal letter signed by senior officer — Whether there was flaw in decision making process — Whether decision making process had been made by Deputy Inspector General of Police — Whether writing of letters formed part of decision making process or merely formed part of administrative functions of Deputy Inspector General of Police*

The only issue raised in this appeal was whether there had been a flaw in the decision making process when the Deputy Inspector General of Police ('Deputy IGP') decided to terminate the services of the appellant. The alleged flaw was whether the signatory to two letters issued by the first respondent was the proper signatory to communicate decisions made by the Deputy IGP in disciplinary proceedings commenced against the appellant. The first letter dated 16 April 1988 was a show cause letter addressed to the appellant informing him that the Deputy IGP had decided to take disciplinary action against him with a view to his dismissal. The letter was signed by one Abdul Aziz bin Hj Hassan ('Abdul Aziz') on behalf of the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) and on behalf of the first respondent. The second letter was dated 7 March 1989, also addressed to the appellant informing him that after considering his representations to the charges of absence without leave, the Deputy IGP has decided to dismiss him from the police force effective from the date of the receipt of the letter. This letter was again signed by Abdul Aziz on behalf of the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) and on behalf of the first respondent. The appellant questioned the status of Abdul Aziz in signing the two letters on the grounds that there was no evidence as to his official capacity and that he had signed the two letters on behalf of the first respondent when in substance the disciplinary proceedings were conducted by the Deputy IGP.

Held, dismissing the appeal:

(1) The Deputy IGP had been delegated with all the powers to initiate disciplinary proceedings against the appellant under the Instrument of Delegation, PU(B) 621. Vested with that power he had decided to issue the show cause letter, and directed it to be sent to the appellant. Upon receipt of the appellant's representations, the Deputy IGP had deliberated upon them and decided that dismissal was the only punishment to meet the many instances of absence without leave on the part of the appellant. He had then directed that his decision to dismiss be communicated to the appellant and this was done through the second letter.

Under these circumstances, the decision making process had been done by Deputy IGP who had been delegated to do so. The writing of the two letters did not form part of the decision making process as the two letters merely conveyed the directives and decisions of the Deputy IGP and formed part of the administrative functions of the Deputy IGP for which an officer can be directed to execute. This was clear from the opening words of the first letter which stated as follows: 'Adalah diarah memaklumkan ...' (see pp 393H–394B).

(2) The two letters were written on the police letter head and the fact that Abdul Aziz's official status had not been identified on the two letters did not render the decision to dismiss made by the Deputy IGP to be contrary to law. Abdul Aziz did not feature in the decision making process. What he did was merely to convey the decisions of the Deputy IGP which were administrative acts that did not fall within the category of the decision making process (see p 394C–D).

[Bahasa Malaysia summary

Satu-satunya persoalan yang ditimbulkan dalam rayuan ini adalah sama ada terdapat kecacatan dalam proses membuat keputusan apabila Timbalan Ketua Inspektor Polis ('Timbalan KIP') memutuskan untuk menamatkan perkhidmatan perayu. Kecacatan yang dikatakan adalah sama ada penandatangan kedua-dua surat yang dikeluarkan oleh responden pertama merupakan penandatangan yang betul untuk memaklumkan keputusan-keputusan yang dibuat oleh Timbalan KIP dalam prosiding-prosiding tatatertib yang dimulakan terhadap perayu. Surat pertama bertarikh 16 April 1988 adalah surat tunjuk sebab kepada perayu memaklumkan beliau bahawa Timbalan KIP telah memutuskan untuk mengambil tindakan tatatertib terhadap beliau dengan tujuan untuk memecat beliau. Surat tersebut telah ditandatangani oleh Abdul Aziz bin Hj Hassan ('Abdul Aziz') bagi pihak Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) dan bagi pihak responden pertama. Surat kedua bertarikh 7 Mac 1989, juga dialamatkan kepada perayu memaklumkan beliau bahawa setelah mempertimbangkan representasi-representasi beliau terhadap pertuduhan-pertuduhan tidak hadir tanpa kebenaran, Timbalan KIP membuat keputusan untuk memecat beliau dari angkatan polis bermula kuat kuasa dari tarikh penerimaan surat tersebut. Surat ini juga telah ditandatangani oleh Abdul Aziz bagi pihak Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) dan bagi pihak responden pertama. Perayu mempersoalkan status Abdul Aziz dalam menandatangani kedua-dua surat tersebut atas alasan bahawa tidak terdapat bukti keterangan tentang kapasiti rasmi beliau dan bahawa beliau telah menandatangani dua surat bagi pihak responden pertama walhal prosiding tatatertib tersebut telah dikendalikan oleh Timbalan KIP.

Diputuskan, menolak rayuan tersebut:

(1) Timbalan KIP telah diberikan semua kuasa untuk memulakan prosiding tatatertib terhadap perayu di bawah Instrument of Delegation, PU(B) 621. Dengan pemberian kuasa tersebut beliau telah memutuskan untuk mengeluarkan surat tunjuk sebab, dan mengarahkan ia diserahkan kepada perayu. Setelah menerima representasi-representasi perayu, Timbalan KIP telah menelitinya dan memutuskan pemecatan adalah satu-satunya hukuman yang diberikan akibat tidak hadir tanpa kebenaran di pihak perayu. Beliau kemudian mengarahkan agar keputusan beliau dimaklumkan kepada perayu dan ini dibuat melalui surat kedua. Dalam keadaan ini, proses membuat keputusan telah dibuat oleh Timbalan KIP yang telah diberi kuasa untuk berbuat demikian. Perutusan dua pucuk surat tersebut tidak membentuk proses membuat keputusan tersebut kerana kedua-dua pucuk surat tersebut hanya memaklumkan arahan-arahan dan keputusan-keputusan Timbalan KIP dan membentuk sebahagian daripada fungsi-fungsi pentadbiran Timbalan KIP di mana seorang pegawai boleh diarahkan untuk melaksanakan sedemikian. Ini adalah jelas dari kata pembuka surat pertama yang menyatakan seperti berikut: 'Adalah diarah memaklumkan ...' (lihat ms 393H–394B).

(2) Kedua-dua pucuk surat telah ditulis atas kepala surat polis dan fakta bahawa status rasmi Abdul Aziz tidak dikenalpasti dalam kedua-dua pucuk surat tersebut tidak menyebabkan keputusan untuk memecat yang dibuat oleh Timbalan KIP bertentangan dengan undang-undang. Abdul Aziz tidak wujud dalam proses membuat keputusan. Apa yang beliau buat hanyalah untuk memaklumkan keputusan-keputusan Timbalan KIP yang merupakan tindakan-tindakan pentadbiran yang tidak terangkum dalam kategori proses membuat keputusan (lihat ms 394C–D).]

Notes

For cases on dismissal in disciplinary proceedings, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1095–1119.

Appeal from: Civil Suit No 21–7 of 1990 (High Court, Pulau Pinang)

Karpal Singh (*Karpal Singh & Co*) for the appellant.

Dato' Zaitun Zawiyah bte Puteh (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Siti Norma Yaakob JCA (delivering judgment of the court): The only issue raised in this appeal is whether there had been a flaw in the decision making process when the Deputy Inspector General of Police ('Deputy IGP') decided to terminate the services of the appellant. The alleged flaw is

whether the signatory to two letters issued by the first respondent is the proper signatory to communicate decisions made by the Deputy IGP in disciplinary proceedings commenced against the appellant.

The first letter dated 16 April 1988 is a show cause letter addressed to the appellant informing him that the Deputy IGP had decided to take disciplinary action against him with a view to his dismissal following complaints of absence from work without leave or without prior permission on the days mentioned in the letter. The appellant was also invited to give his written explanation within 16 days of the receipt of the letter failing which the Deputy IGP would take whatever action he deemed necessary. The letter was signed by one, Abdul Aziz bin Hj Hassan ('Abdul Aziz') on behalf of the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) and on behalf of the first respondent.

The second letter is dated 7 March 1989, also addressed to the appellant informing him that after considering his representations to the charges of absence without leave, the Deputy IGP has decided to dismiss him from the police force effective from the date of the receipt of the letter. This letter is again signed by Abdul Aziz on behalf of the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) and on behalf of the first respondent.

Before us as well as in the court below, the appellant questioned the status of Abdul Aziz in signing the two letters on the grounds that firstly there is no evidence as to his official capacity and secondly he had signed the two letters on behalf of the first respondent when in substance the disciplinary proceedings were conducted by the Deputy IGP. It is also the appellant's contention that both the letters should have been signed by the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib). Failure to do so in this case has rendered his dismissal null and void.

It is not disputed that under the Instrument of Delegation, PU(B) 621, the Deputy IGP has been delegated the power to initiate disciplinary proceedings including the power to impose the punishment of dismissal for all senior police officers of the rank of probationary inspectors up to and including the chief inspector. At the material time, the appellant was a police inspector and fell in the category of officers over whom the Deputy IGP can initiate disciplinary action.

It must be remembered that what we are most concerned with in this appeal is whether the decision making process leading to the dismissal of the appellant has been rightly and legally followed and not the decision to dismiss. We are therefore to review whether in arriving at the decision to dismiss, the procedure in arriving at that decision has been strictly adhered to.

As we have pointed out, the Deputy IGP has been delegated with all the powers to initiate disciplinary proceedings against the appellant under the Instrument of Delegation, PU(B) 621. Vested with that power, he had decided to issue the show cause letter, and directed it to be sent to the appellant. This was the first letter. Upon receipt of the appellant's representations, the Deputy IGP had deliberated upon them and decided

that dismissal was the only punishment to meet the many instances of absence without leave on the part of the appellant. He had then directed that his decision to dismiss be communicated to the appellant and this was done through the second letter. Under these circumstances, we say that the decision making process has been done by the one and only person who has been delegated to do so namely the Deputy IGP. The writing of the two letters does not form part of the decision making process as the two letters merely convey the directives and decisions of the Deputy IGP and form part of the administrative functions of the Deputy IGP for which an officer can be directed to execute. This is clear from the opening words of the first letter which states as follows: 'Adalah diarah memaklumkan ...'. Likewise, the second paragraph of the second letter contains the following words:

> Dengan ini adalah dimaklumkan bahawa setelah menimbang representasi anda dengan teliti dan saksama, YBhg Tan Sri Timbalan Ketua Polis Negara memutuskan ...

The two letters were written on the police letter head and based on the opening words in the two letters as aforesaid, Abdul Aziz must have been a senior officer in the police force and the fact that his official status had not been identified on the two letters does not render the decision to dismiss made by the Deputy IGP to be contrary to law. Abdul Aziz does not feature in the decision making process. What he did was merely to convey the decisions of the Deputy IGP, administrative acts which do not fall within the category of the decision making process.

Likewise, there is no merit to the objection that Abdul Aziz had no authority to sign the two letters on behalf of the first respondent as the latter did not conduct the disciplinary proceedings.

Whilst we appreciate that the disciplinary proceedings were conducted by the Deputy IGP and not by the first respondent, it must not be forgotten that the appellant was employed by the first respondent as the agent of the second respondent. The appellant has pleaded and acknowledged this and has cited both the first and second respondents as parties to this civil suit. As such, when Abdul Aziz signed the two letters on behalf of the first respondent, he did so on behalf of the appellant's employer. This cannot be faulted against the respondents.

For the reasons given in this judgment, we had dismissed this appeal with costs and ordered that the deposit be paid out to the respondents to account of their taxed costs.

Appeal dismissed.

Reported by Lim Lee Na